IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 705 OF 2007

Shri Harishchandra Shivram Gurav
Age-33 years
Residing at Pratiksha Nagar
Suswagatam Building, No.15,5th floor
Room No.505, Sion Koliwada,
Mumbai. .. Appellant
(Org.Defendant No.1)

Versus

1) Smt. Sulochana Rajaram Gurav

2) Rajani Rajaram Gurav
Both Adults,
Residing at C/o. Mrs. Arti Bhatkar,
F-17, Kagdewadi
T.H.Kataria Marg, Mahim,
Mumbai-400 016.

3) The Hon. Secretary,
Karnataka Co-op. Housing
Society Ltd.
F/1, Karnataka Building,
Mogul Lane, Matunga, Mumbai-16.

4) Maharashtra Housing and
Area Development Authority
Through M.B.R. & R. Board,
S.S.A. Pulav Marg, Sonawala,
Building, Dadar (East),
Mumbai-14. ... Respondents
(Nos.1 & 2 are Org. Plaintiffs
& Nos.3 and 4 are Orig.Deft.)

Mr.Kuldeep S.Patil, for the Appellant
Shri Suresh Gole, i/b. Gole & Company for the Respondent Nos.1 and 2
Shri Thorat, for the Respondent Nos.4 MHADA

CORAM : S.R. SATHE,J.
DATED : 28/09/2007

P.C.:-

1. Appellant-original defendant No.1 in S.C. Suit

No.2749 of 2004 has preferred this appeal against the order passed by the Judge, City Civil Court, Bombay whereby Plaintiff's Notice of Motion No.3560 of 2006 was partly allowed and defendant No.2 was directed to allot and hand over the possession of permanent alternate accommodation jointly to the Plaintiffs and defendant No.1 during the pendency and disposal of the suit. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiffs' and 'defendants'.

2. The brief facts giving rise to this present appeal are as under :-

It is the case of Plaintiffs that Plaintiff No.2 is the daughter of Plaintiff No.1. The husband of Plaintiff No.1 and father of Plaintiff No.2 namely Rajaram Gurav acquired original tenanted premises i.e. room No.24 situated on the 2nd floor Karnataka Housing Society, Moghal Lane, Mahim from its original tenant Bhikaji Atmaram Bhutal. The father of defendant No.1 namely Shivram was not having any accommodation to reside in Mumbai. As Shivram was related to Rajaram, he approached Rajaram and requested him to accommodate him in the tenanted premises. Considering the relations between them, Rajaram and Shivram started residing together in the tenanted premises i.e. room No.24-B. After the death of Shivram there used to be dispute

between the family of Plaintiffs and family of defendant No.1. Rajaram died in the year 1997. Prior to that, Shivram had also expired. Thus, the defendant No.1 was the only male member in the said house. According to Plaintiffs, defendant No.1 illegally got the rent receipts of the tenanted premises transferred in his name so as to claim permanent alternate accommodation. Thereafter, the defendant No.1 on the basis of the rent receipts secured transit accommodation at Pratiksha Nagar, Sion and he was also promised by the defendant No.2 to provide permanent alternate accommodation in the new building which was to be constructed at final plot No.261 TPS-3 i.e. place where initial tenanted premises was situated. However, when Plaintiffs' claimed occupation in the transit accommodation as well as permanent alternate accommodation the defendant No.1 started refusing Plaintiffs' claim. Hence, Plaintiffs filed the present suit for declaration that transfer of rent receipts of the earlier tenanted premises in the name of defendant No.1 is illegal and bad in law and prayed for permanent injunction directing the defendant Nos.2 and 3 to allot permanent alternate premises in lieu of earlier tenanted premises in the name of Plaintiffs under section 94 of MHADA Act, 1963.

3. Plaintiffs also filed Notice of Motion and prayed for temporary injunction restraining defendant No.1 from obstructing them from their joint use, enjoyment and occupation of transit accommodation and new tenement allotted in the name of defendant No.1.

4. The defendant No.1 filed his Written Statement and opposed the suit as well as Notice of Motion. He contended that initially room No.5 of the old building was in possession of his father alongwith one Bhikaji Bhutal as joint tenant. In 1957-58, the said building was demolished and new building was constructed and defendant No.2 Society accommodated his father and Bhikaji Bhutal in room No.24 (original tenanted premises) as monthly tenant. The said room was divided in two compartments each having separate entrance. The rent receipts for room No.24 was only in the name of Bhutal. However, he left the room in 1982 and defendant No.1's father continued in the said room. Shivram Gurav, father of present defendant No.1 filed RAD Suit No.1458 of 1988 against the defendant No.2 Society and Mr. Bhutal for declaration of tenancy. However, the said suit was dismissed on 14/08/2000 on the ground that Shivram Gurav alone can not be recognized as

tenant. Appeal was preferred by defendant's father. However, subsequently, defendant No.2 Society transferred the tenancy in the name of defendant's father and therefore, defendant's father withdrew the appeal.

5. The defendant No.1 contended that the husband of Plaintiff No.1 was related to Shivram and as he had no place for residence in Mumbai, father of defendant No.1 allowed him to use the suit room but that was only by way of permissive use. The name of husband of Plaintiff No.1 was also included in the ration card. It is the contention of the defendant that though Plaintiff No.1's husband was residing in Room No.24, Plaintiffs never resided in the said room and as such they are not “occupiers” within the meaning of Section 2(25) of MHADA Act and as such they are not entitled to claim alternate permanent accommodation. The defendant No.1, therefore, prayed for the dismissal of the Notice of Motion.

6. After hearing the arguments advanced by both the learned Advocates and considering documents produced by them, the learned Judge came to the conclusion that Plaintiffs have made out a prima facie case to show that they are entitled to have

accommodation in the permanent alternate accommodation jointly with defendant No.1. He, therefore, allowed the Notice of Motion partly and issued necessary direction to defendant No.2 Society.

7. Being aggrieved by the said order the defendant No.1 has filed the present appeal. In this appeal before me, Shri Kuldeep Patil, learned Advocate for the defendant No.1 has urged two points. Firstly, he submitted that the learned Trial Judge has not properly construed the provisions of Section 2 (25) of MHADA Act and it ought to have been held that the defendant No.1 alone is the occupant of the suit room. Secondly, he canvassed before me that the learned Trial Judge has not appreciated the documents produced by the defendant No.1 and has wrongly relied on the documents produced by the Plaintiffs. He, therefore, submitted that the order passed by the learned Trial Judge is not legal and correct. According to him, Plaintiffs have failed to make out any prima facie case for granting temporary injunction as prayed. He, therefore, submitted that the appeal be allowed and the Notice of Motion be rejected. As against this, the learned Advocate for the Plaintiffs supported the order passed by the learned Trial Court.

8. From the perusal of the documents and submissions made before me it is not in dispute that initially room No.24 was allotted to Bhutal and then to the father of defendant No.1. Admittedly, the defendant No.2 Society has issued certain rent receipts initially in the name of Bhutal and subsequently, in the name of Shivram i.e. father of defendant No.1.

9. It is the case of the Plaintiffs that husband of the Plaintiff No.1 i.e. Rajaram had in fact taken room No.24 from original tenant Bhutal and subsequently, Rajaram allowed Shivram to stay in the premises but as Rajaram and Shivram died, present defendant No.1 being the only male member, rent receipt was issued in his name. It is Plaintiffs' case that they, however, continued to stay in the room No.24. Plaintiffs have produced several documents such as ration card, money order receipts, election identity card which go to show that Rajaram as well as present Plaintiffs were residing in the old premises i.e. room No.24. As it is there in no specific evidence to show as to whether Rajaram occupied the suit room first and then he allowed Shivram or Shivram occupied the room and then allowed Rajaram to stay in the said room. But one thing is certain that for a long period both

Rajaram and Shivram were in occupation of the suit room No.24 jointly.

10. The dispute between the parties has arisen when question of allotment of permanent alternate accommodation arose. It is needless to say that such accommodation can be allotted to the 'Occupier'. The word 'Occupier' is defined in Section-2(25) of MHADA Act as follows :-

> ***"2(25) "Occupier" includes -***
>
> ***(a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable ;***
>
> ***(b) an owner in occupation of, or otherwise using, his land or building;***
>
> ***(c) a rent-free tenant of any land or building;***
>
> ***(d) a licensee in occupation of any land or building; and***

(e) any person who is liable to pay to the owner damages for the use and occupation of any land or building;"

11. So, while determining the question as to whether Plaintiffs are entitled for declaration and injunction against defendant Nos.2 and 3, it would be necessary to find out as to who is the 'occupier', the defendant No.1 or Plaintiffs or both. The said issue can be decided only after full trial. Prima facie, though it appears that Plaintiffs and defendants are in joint occupation of suit room No.24 it can not be said that Plaintiffs are occupiers as contemplated under section 2 (25) of MHADA Act.

12. As there is enough material on record to show that Plaintiffs and defendant No.1 were occupying the old suit room jointly. Prima facie, Plaintiffs are entitled even to occupy the alternate accommodation jointly. So, to that extent, Plaintiffs have certainly made out a prima facie case for granting temporary injunction against the defendant No.1 restraining him from obstructing joint possession of the transit accommodation as well as alternate permanent accommodation till the disposal of the suit. In my

opinion, at this stage, it would not be proper to direct the defendant No.2 Society to allot the permanent alternate accommodation jointly to Plaintiff and defendant No.1. It is therefore necessary to modify the order passed by the learned Trial Judge to that effect. Hence, I pass following order :-

O R D E R

The appeal is partly allowed.

The order of the trial court is modified. The defendant No.1 is restrained from obstructing Plaintiffs' joint possession with defendant No.1 of the transit accommodation in the building known as Pratikshanagar, Sion and/or in the permanent alternate accommodation provided by the defendant Nos.2 and 3, till the disposal of the suit.

Under the circumstances of the case parties to bear their own costs of this appeal.

(S.R.SATHE,J.)